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10/590,394

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EXAMINER

WALKER, NED ANDREW

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/590,394	<b>Applicant(s)</b> MERKER ET AL.	
	<b>Examiner</b> NED A. WALKER	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on May 6<sup>th</sup>, 2009. These drawings are not acceptable.
2. The drawings are not accepted because FIGS. 1, 2B, 3, and 4 contain new matter. Refer to the Response to Amendment section below for further explanation.

### ***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter (37 CFR 1.75(d)(1) and MPEP §608.01(o)). Correction of the following is required: the amendment filed May 6<sup>th</sup>, 2009 comprises the limitation “a roll of the rolling blind supported by the at least one bearing *for rotation* about a longitudinal axis” (emphasis added) in line 6 of the newly added Claim 8.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the amendment filed May 6<sup>th</sup>, 2009 comprises the

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limitation "a roll of the rolling blind supported by the at least one bearing *for rotation* about a longitudinal axis" (emphasis added) in line 6 of the newly added Claim 8. The Examiner could not find support for this limitation in the originally filed disclosure.

6. Claims 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the amendment filed May 6<sup>th</sup>, 2009 comprises the limitation "a roll of the rolling blind supported by the at least one bearing *for rotation* about a longitudinal axis" (emphasis added) in line 6 of the newly added Claim 8 is not enabled by the specification.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "and longitudinally slidable" in line 6. It is unclear what object the Applicant intends to modify with this phrase and describe as longitudinally slidable. Therefore the claim is indefinite for being unclear and ambiguous.

Claims 9-11 are rejected for incorporating the errors from their respective parent claim by dependency.

**Notes**

9. Note 1: Since a specific or technical definition for the term **bearing** is absent from the Applicant's disclosure, the term has been given its broadest reasonable interpretation consistent with the specification. (See MPEP 2111; Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005).

As such, the *Merriam-Webster Online Dictionary* defines **bearing** as "an object, surface, or point that supports". The Examiner has thereby applied the prior art below within this context

10. Note 2: With respect to the rejections applied herein, see the English translation attached to Japanese Pat. No. 2001123766, a copy of which was furnished with the Office Action dated January 29<sup>th</sup>, 2009.

**Claim Rejections - 35 USC § 102**

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**12. Claims 1-3 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto (JP Pat. No. 2001123766).**

Yamamoto discloses a refrigerated cabinet (FIG. 1) comprising at least one rolling night blind (6) and a goods compartment (1) having at least one goods compartment opening (A) adapted to be closed by means of the at least one rolling night blind in an operative position thereof, the at least one rolling night blind are held in

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the rolled-up state in the inoperative position thereof (FIGS 1-2), characterized in that a support of the at least one of the rolling night blinds comprises at least one loose bearing (8) for rotation about a longitudinal axis (7), such that the at least one rolling night blind can be supported so as to be slidable (capable of sliding the roll since adequate clearance is shown on the end of the roll in FIG. 4 which would allow for sliding adjustability when the roll is slacked) in a direction along a longitudinal axis of a blind carrier shaft (7, FIGS. 1-3); wherein the at least one rolling night blind is two or more rolling night blinds (6 in FIG. 1) characterized in that the rolling night blinds, at least at adjoining side portions thereof, have means (19, 20) including adhesive tape, hook-and-loop-type closure, or zip fastener for connecting the rolling night blinds (FIGS. 1, 3).

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**16. Claims 1-3 and 8-11 are rejected under 35 U.S.C. 102(b) as being obvious over Yamamoto (JP Pat. No. 2001123766).**

*Note: See English translation attached to previously submitted JP Pat. No. 2001123766.*

While the Examiner contends that Yamamoto anticipates all of the features of the claims as described under paragraph 6 above, in the case that the Applicant argues otherwise in that Yamamoto does not anticipate the claims by citing a lack of capability of meeting the limitation that the at least one rolling night blind can be supported so as to be slidable in a direction along a longitudinal axis of a blind carrier shaft, the Examiner also contends that this is obvious in view of Yamamoto. The Examiner takes official notice that it is old and notoriously well known, and is capable of instant and unquestionable demonstration as being well-known, to install a night blind or curtain on a carrier shaft or rod so that a certain amount of clearance exists on one or both ends to allow for installation as well as to prevent either side of the curtain from being wedged

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or contacting friction with the end piece on the rod and/or the frame of the feature being covered. Furthermore, one would also allow a clearance on one or both ends of the curtain rod so as to provide adjustability for properly lining up the curtain or night blind with the feature to be covered. This provision of adjustability, where needed, involves only routine skill in the art (*In re Stevens*, 101 USPQ 284 (CCPA 1954)). It is thereby obvious that such a clearance demonstrates a design that would provide for slidable adjustability in a direction along the longitudinal axis when the blind is sufficiently slacked.

**17. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being obvious over Yamamoto (JP Pat. No. 2001123766) in view of Eming (US Pat. No. 5,171,076).**

Yamamoto discloses substantially all the limitations of the claims except for wherein the at least one rolling night blind has holes and is perforated in different manner in different portions across the area thereof; formed with said holes in the upper portion thereof only; the holes are formed by perforating the night covering and/or by the material chosen for the night covering.

Eming teaches wherein the at least one rolling night blind has holes (25) and is perforated in different manner in different portions across the area thereof (FIG. 7); formed with said holes in the upper portion thereof only (FIG. 7); the holes are formed by perforating the night covering and/or by the material chosen for the night covering (FIG. 7).



It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate holes in the blind so that proper ventilation or temperature control can be maintained while defrosting, cooling, or heating.

### ***Response to Amendment***

18. The amendment filed May 6<sup>th</sup>, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention.

The added material which is not supported by the original disclosure is as follows:

#### **Specification Description**

- The amendment to paragraph [0017], denoting “an open front cabinet”.

The original disclosure makes no mention of the term “open front cabinet” nor is the disclosed cabinet described as being “open front”.

#### **Drawings**

- The Replacement Drawing Sheet, FIG. 1, goods compartment opening feature (14). The obscure space below the rolling blind (1) is now identified as the goods compartment opening (14); however, the Examiner contends that this is new matter since the disclosure did not provide for this particular location, design, and relationship to surrounding features, as it is currently illustrated.
- The Replacement Drawing Sheet, FIGS. 1-2, and New Drawing Sheet, FIGS. 3-4, longitudinal axis (20). Identifying the longitudinal axis (20) as

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the part that was previously only identified as the blind carrier shaft (4) constitutes new matter since the original disclosure did not set for the this definition or orientation of the axis. The axis could have been defined and illustrated in numerous different directions.

- The Replacement Drawing Sheet, FIG. 2, and New Drawing Sheet, FIGS. 3-4, means for connecting feature (30). The structure of the means for connecting (30) feature now includes two additional dotted lines that were not previously present in the drawings nor were they described or identified in the original disclosure.
- The New Drawing Sheet, FIGS. 3-4, the perforations (40) feature. The Examiner contends that this is new matter since the disclosure did not provide for this particular location, design, and relationship to surrounding features, as it is currently illustrated.
- The New Drawing Sheet, FIGS. 3-4, the upper portion, 42, and lower portion, 44, features. The Examiner contends that this is new matter since the disclosure did not provide for this particular location or size of the illustrated portions, as it is currently illustrated.

#### Claims

- The newly added claim 8, line 6, recites the limitation “a roll of the rolling blind supported by the at least one bearing *for rotation* about a longitudinal axis” (emphasis added). The original disclosure makes no mention of the

rotation function nor is it discussed how the bearing provides the functional use of rotation about a longitudinal axis.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Response to Arguments***

19. Applicant's arguments, see amendment filed December 3rd, 2008, with respect to the rejection of claims 10-12 under 35 USC §112 have been fully considered and are persuasive in view of the amendment. The original rejection under §112 has been withdrawn; however, upon further review, a new rejection under §112 has been made as detailed in the above section.

20. Applicant's arguments, see amendment filed December 3rd, 2008, with respect to the rejection of claims 10-12 under 35 USC §102(b) as being anticipated by Tenney have been fully considered and are persuasive in view of the amendment to the claims. Therefore, the rejection has been withdrawn; however, upon further consideration, new grounds for rejection have been made under 35 U.S.C. §102(b) as anticipated by Stone.

The new grounds for rejection have rendered the remainder of the applicant's arguments regarding the aforementioned §102(b) rejection moot.

### ***Conclusion***

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
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NW